

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARY L.J.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C22-0709-MAT

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

Plaintiff appeals a final decision of the Commissioner of the Social Security Administration (Commissioner) denying Plaintiff's applications for disability benefits after a hearing before an administrative law judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is REVERSED and REMANDED for further administrative proceedings.

**FACTS AND PROCEDURAL HISTORY**

Plaintiff was born on XXXX, 1972.<sup>1</sup> Plaintiff has at least a high school education and previously worked as a paralegal/paralegal assistant and florist. AR 19. Plaintiff filed an application for Disability Insurance Benefits (DIB) and an application for Supplemental Security

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<sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 Income (SSI) on October 29, 2018, alleging disability beginning September 14, 2008.<sup>2</sup> AR 6. The  
2 applications were denied at the initial level and on reconsideration. On April 6, 2021, the ALJ held  
3 a hearing and took testimony from Plaintiff and a vocational expert (VE).<sup>3</sup> AR 51–95. On April  
4 20, 2021, the ALJ issued a decision finding Plaintiff not disabled. AR 6–21. Plaintiff timely  
5 appealed. The Appeals Council denied Plaintiff’s request for review on April 5, 2022 (AR 27–31),  
6 making the ALJ’s decision the final decision of the Commissioner. Plaintiff appeals this final  
7 decision of the Commissioner to this Court.

### 8 **JURISDICTION**

9 The Court has jurisdiction to review the ALJ’s decision pursuant to 42 U.S.C. § 405(g).

### 10 **STANDARD OF REVIEW**

11 This Court’s review of the ALJ’s decision is limited to whether the decision is in  
12 accordance with the law and the findings are supported by substantial evidence in the record as a  
13 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). “Substantial evidence” means more  
14 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable  
15 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750  
16 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ’s  
17 decision, the Court must uphold the ALJ’s decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th  
18 Cir. 2002).

### 19 **DISCUSSION**

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21 <sup>2</sup> The ALJ’s decision states that Plaintiff alleged disability since September 14, 2006, in relation to her SSI  
22 application. AR 6. Plaintiff asserts that her SSI application contains the incorrect year and that she alleges  
23 disability since September 14, 2008, for both her DIB and SSI claims. Dkt. 8, at 2 n.1; AR 460. The  
Commissioner does not dispute that Plaintiff’s alleged onset date is in 2008. Dkt. 9, at 14.

<sup>3</sup> A hearing was originally scheduled for December 8, 2020; however, the ALJ continued the hearing “when  
it became clear that there were outstanding medical records that needed to be obtained.” AR 6, 32–50.

1 The Commissioner follows a five-step sequential evaluation process for determining  
2 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000).

3 At step one, the ALJ found that Plaintiff had engaged in substantial gainful activity since  
4 September 14, 2006, and that Plaintiff's earnings in 2008 were sufficient to constitute substantial  
5 gainful activity. AR 9. However, the ALJ's step one finding does not accurately consider the  
6 relevant period because Plaintiff alleges an onset date of September 14, 2008. Nevertheless, any  
7 error in the ALJ's step one finding would be harmless because the ALJ did not find Plaintiff  
8 disabled at step one of the sequential evaluation. *See Stout v. Comm'r of Soc. Sec. Admin.*, 454  
9 F.3d 1050, 1055 (9th Cir. 2006) (an ALJ's error may be deemed harmless where it is  
10 "inconsequential to the ultimate nondisability determination").

11 At step two, the ALJ found that Plaintiff has the following severe impairments:  
12 fibromyalgia; tremors; lumbar and cervical degenerative disc disease; irritable bowel syndrome;  
13 asthma; depressive disorder; and anxiety disorder. AR 9.

14 At step three, the ALJ found that Plaintiff's impairments did not meet or equal the criteria  
15 of a listed impairment. AR 9–11.

16 At step four, the ALJ found that Plaintiff has the residual functional capacity (RFC) to  
17 perform light work, as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b), with the following  
18 limitations:

19 [Plaintiff] is able to remember, understand, and carry out simple and  
20 routine instructions and tasks consistent with the learning and  
21 training requirements of SVP level one and two jobs; can lift and/or  
22 carry ten pounds occasionally and frequently; no overhead reaching;  
23 frequent reaching at or below shoulder level; frequent handling and  
fingering; no contact with the public; capable of working in  
proximity to but not in coordination with co-workers; occasional  
contact with supervisors; occasional stooping; no crouching,  
crawling, kneeling, or climbing ramps, stairs, ropes, ladders, or  
scaffolds; no balancing, working at heights, or in proximity to

1 hazardous conditions; and must avoid concentrated exposure to  
2 pulmonary irritants.

3 AR 11–12. With that assessment, the ALJ found Plaintiff unable to perform any past relevant work.

4 AR 19.

5 At step five, the ALJ found that Plaintiff is capable of making a successful adjustment to  
6 other work that exists in significant numbers in the national economy. AR 21. With the assistance  
7 of a VE, the ALJ found Plaintiff capable of performing the requirements of representative  
8 occupations such as production assembler, hand packager, electrical accessories assembler. AR  
9 20. The VE further testified that, if limited to sedentary work, Plaintiff would be capable of  
10 performing the requirements of table bench worker and taper. AR 20.

11 Plaintiff raises the following issues on appeal: (1) Whether the ALJ properly considered  
12 the opinion of examining psychologist David Widlan, Ph.D.; (2) whether the ALJ properly  
13 considered Plaintiff's subjective complaints about pain, fatigue, and confusion from her  
14 fibromyalgia and other impairments; and (3) whether the ALJ properly considered the lay  
15 witnesses' written statements. Plaintiff requests remand for an award of benefits or, in the  
16 alternative, remand for further administrative proceedings. The Commissioner argues the ALJ's  
17 decision has the support of substantial evidence and should be affirmed.

### 18 **1. Medical Opinion Evidence**

19 The regulations effective March 27, 2017, require the ALJ to articulate how persuasive the  
20 ALJ finds medical opinions and to explain how the ALJ considered the supportability and  
21 consistency factors. 20 C.F.R. §§ 404.1520c(a)–(b), 416.920c(a)–(b). The “more relevant the  
22 objective medical evidence and supporting explanations presented” and the “more consistent” with  
23 evidence from other sources, the more persuasive a medical opinion or prior finding. *Id.* at  
§§ 404.1520c(c)(1)–(2), 416.920c(c)(1)–(2). Further, the Court must continue to consider whether

1 the ALJ's analysis is supported by substantial evidence. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th  
2 Cir. 2022); *see also* 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social Security as  
3 to any fact, if supported by substantial evidence, shall be conclusive . . ."). With these regulations  
4 and considerations in mind, the Court proceeds to its analysis of the medical evidence in this case.

5 A. David Widlan, Ph.D.

6 Dr. Widlan examined Plaintiff on March 11, 2019. AR 1917–21. Dr. Widlan found that  
7 Plaintiff suffers from generalized anxiety disorder and chronic depression, gets easily  
8 overwhelmed, is prone to difficulties with stress, and has "some deficits in memory and  
9 concentration with basic social reasoning intact." AR 1920. Dr. Widlan opined that Plaintiff "is  
10 cognitively able to accept simple instruction from a supervisor" but "[m]oderately complex tasks  
11 would be challenging for her," "likely would struggle to persist with adequate pace due to fatigue,"  
12 and "likely has some deficits in [activities of daily living]." AR 1920–21. The doctor further opined  
13 that Plaintiff "can negotiate simple social stressors on a consistent and routine basis" and is capable  
14 of handling her funds. AR 1920–21.

15 The ALJ found Dr. Widlan's opinion unpersuasive. AR 17. The ALJ found that most of  
16 the records Dr. Widlan reviewed were not contained in the record and unable to be verified. AR  
17 17–18. The ALJ found that the doctor provided "a very scant opinion about the claimant's ability  
18 to function mentally" that was inconsistent with his own examination findings and other evidence  
19 of record. AR 18. The ALJ further found that Dr. Widlan indicated that Plaintiff had difficulties  
20 with the examination that are not consistent with other evidence of record and, therefore, "cannot  
21 be considered an accurate reflection of the claimant's mental functioning." AR 18.

22 Plaintiff argues that the ALJ improperly rejected Dr. Widlan's opinion by finding that the  
23 doctor reviewed a 2012 statement from Dr. David Shaw, which the ALJ found unpersuasive. Dkt.

1 8, at 5. The Commissioner argues that the ALJ did not reject Dr. Widlan’s opinion on this basis  
2 and, rather, that the ALJ merely noted that Dr. Shaw’s opinion was in the record. Dkt. 13, at 13.  
3 Because the Commissioner concedes that the ALJ did not reject Dr. Widlan’s opinion on the  
4 grounds that the doctor reviewed Dr. Shaw’s opinion, the Court proceeds to reviewing only the  
5 reasons offered by the ALJ for rejecting Dr. Widlan’s opinion. *See Bray v. Comm’r of Soc. Sec.*  
6 *Admin.*, 554 F.3d 1219, 1226 (9th Cir. 2009) (“Long-standing principles of administrative law  
7 require us to review the ALJ’s decision based on the reasoning and factual findings offered by the  
8 ALJ.”).

9 Plaintiff argues that the ALJ improperly rejected Dr. Widlan’s opinion by finding the  
10 doctor’s assessment of functional limitations to be “very scant.”<sup>4</sup> Dkt. 8, at 5–6. Plaintiff argues  
11 that the doctor’s opinion was well supported by objective evidence, including the doctor’s own  
12 clinical interview and examination notes. *Id.* Under the supportability factor, “[t]he more relevant  
13 the objective medical evidence and supporting explanations presented by a medical source are to  
14 support his or her medical opinion(s) . . . the more persuasive the medical opinions . . . will be.”  
15 20 C.F.R. §§ 404.1520c(c)(1), 416.920c(c)(1). The ALJ found that Dr. Widlan’s assessment of  
16 Plaintiff’s mental functioning was “not consistent with his examination findings.” AR 18. The  
17 ALJ, however, failed to explain how or why Dr. Widlan’s clinical findings failed to support his  
18 opinion. Indeed, as the ALJ acknowledged, Dr. Widlan noted largely abnormal findings in  
19 Plaintiff’s mental functioning during Plaintiff’s examination, including that Plaintiff “was  
20 confused, exhibited general dysphoria and a flat affect, struggled to identify time periods for life

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21 <sup>4</sup> Plaintiff also argues that the ALJ had a duty to recontact Dr. Widlan for clarification. Dkt. 8, at 5–6.  
22 Although the ALJ has a duty to develop the record, this duty “is triggered only when there is ambiguous  
23 evidence or when the record is inadequate to allow for proper evaluation of the evidence.” *Mayer v.*  
*Massanari*, 276 F.3d 453, 459–60 (9th Cir. 2001). Here, the ALJ did not find that the evidence was  
ambiguous or that the record was inadequate to evaluate Dr. Widlan’s opinion. Therefore, Plaintiff has not  
shown that the ALJ was required to develop the record further.

1 events, could only repeat four digits forward and three backward, could not interpret a proverb,  
2 did not know the governor of Washington, could not name a single current event, and could not  
3 perform serial 3's or serial 7's." AR 18. Dr. Widlan further found that Plaintiff "exhibited  
4 significant concentration deficits" and "struggled to maintain focus at times and responded with  
5 slow pace." AR 1920. These findings are not reasonably inconsistent with Dr. Widlan's assessment  
6 that Plaintiff would have challenges with moderately complex tasks and would likely struggle to  
7 persist with pace. Therefore, the ALJ's finding that Dr. Widlan's opinion was not supported by his  
8 own examination findings is not supported by substantial evidence.

9 Plaintiff next argues that the ALJ improperly rejected Dr. Widlan's opinion by finding it  
10 inconsistent "with other evidence of record." Dkt. 8, at 6. Under the consistency factor, "[t]he more  
11 consistent a medical opinion(s) . . . is with the evidence from other medical sources and nonmedical  
12 sources in the claim, the more persuasive the medical opinion(s) . . . will be." 20 C.F.R.  
13 §§ 404.1520(c)(2), 416.920(c)(2). The ALJ found that "[n]o other treating or examining  
14 source . . . had indicated the claimant has such limitations [as those assessed by Dr. Widlan]" and  
15 that the record indicates that Plaintiff is "highly educated," "has performed skilled, demanding  
16 jobs despite her impairments," and "has retained her basic level of mental functioning." AR 18. In  
17 the decision, the ALJ cited medical records that described Plaintiff with normal mood, affect,  
18 behavior, thought content, judgment, and memory. AR 10–11, 14. However, the ALJ failed to  
19 explain how or why these records were inconsistent with Dr. Widlan's assessment that Plaintiff  
20 would struggle to concentrate, focus, or persist with adequate pace in the workplace. Indeed, the  
21 medical records cited by the ALJ did not assess Plaintiff's concentration or persistence, and Dr.  
22 Widlan's assessment is the only complete mental status examination of record. Therefore, the  
23 ALJ's finding that Dr. Widlan's opinion was inconsistent with evidence of record was not

1 supported by substantial evidence.

2 Plaintiff further argues that the ALJ improperly found Dr. Widlan's opinion unsupported  
3 by the record because the ALJ failed to consider that the effects of fibromyalgia vary in intensity.  
4 Dkt. 8, at 7. Plaintiff argues that the record contains evidence indicating that Plaintiff experienced  
5 "fibro fog," confusion, and decreased concentration related to her fibromyalgia. *Id.*; Dkt. 12, at 4.  
6 As discussed above, the ALJ improperly evaluated the consistency factor when evaluating the  
7 persuasiveness of Dr. Widlan's opinion. On remand, the ALJ should reevaluate the medical  
8 evidence related to Plaintiff's ability to concentrate and focus when evaluating the consistency of  
9 Dr. Wildan's opinion according to the regulatory factors. *See* 20 C.F.R. §§ 404.1545(e)(3),  
10 416.945(e)(3) (the RFC is assessed "based on all of the relevant medical and other evidence.").

11 Plaintiff argues that the ALJ improperly rejected Dr. Widlan's opinion by finding that the  
12 doctor relied on records that were not in the record. Dkt. 8, at 5. Plaintiff points out that all of the  
13 records reviewed by Dr. Widlan can be found in the record. *Id.* The Commissioner concedes that  
14 the ALJ erred in this regard but argues that the error was harmless because the ALJ provided other  
15 reasons to reject Dr. Widlan's opinion. Dkt. 9, at 12–13. However, as discussed above, the ALJ's  
16 evaluation of the supportability and consistency of Dr. Widlan's opinion lacks the support of  
17 substantial evidence. Therefore, the ALJ's error was not harmless.

## 18 **2. Subjective Testimony**

19 The ALJ must provide specific, clear, and convincing reasons, supported by substantial  
20 evidence, for rejecting a claimant's subjective symptom testimony.<sup>5</sup> *Trevizo v. Berryhill*, 871 F.3d

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22 <sup>5</sup> Effective March 28, 2016, the Social Security Administration (SSA) eliminated the term "credibility"  
23 from its policy and clarified the evaluation of a claimant's subjective symptoms is not an examination of  
character. SSR 16-3p. The Court continues to cite to relevant case law utilizing the term credibility.



664, 678 (9th Cir. 2017); *Smolen v. Chater*, 80 F.3d 1273, 1286 (9th Cir. 1996). An ALJ may reject a claimant’s symptom testimony when it is contradicted by the medical evidence, but not when it merely lacks support in the medical evidence. *See Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (“Contradiction with the medical record is a sufficient basis for rejecting a claimant’s subjective testimony.”); *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (“[L]ack of medical evidence cannot form the sole basis for discounting pain testimony.”).

Plaintiff alleges that she cannot work because she has chronic pain that makes it hard to move her body and clouds her ability to think clearly, that she experiences confusion and brain fog, and that basic activities, such as getting up and feeding herself, is a full-time job and exhausting. AR 364, 397. Plaintiff alleges that her impairments affect most of her functional abilities. AR 369, 402. At the hearing, Plaintiff testified that she experiences “fibro fog,” which makes her unable to think and feel “scrambled,” and that her fibromyalgia symptoms are unpredictable. AR 60, 75–76.

The ALJ found that Plaintiff’s “medically determinable impairments could reasonably be expected to cause some of her alleged symptoms, but that her statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record . . . .” AR 13.

Plaintiff argues that the ALJ improperly rejected Plaintiff’s testimony based on inconsistency with medical records that described Plaintiff to be in “no acute distress.” Dkt. 8, at 10. Plaintiff argues that notations of “no acute distress” are irrelevant where, as here, the claimant has a chronic condition. *Id.* (citing *Combs v. Berryhill*, 878 F.3d 642 (8th Cir. 2017)). In *Combs*, the Eight Circuit Court of Appeals found that the ALJ erred by relying on his own interpretation of what “no acute distress” meant in terms of Plaintiff’s ability to function in the workplace.

1 *Combs*, 878 F.3d at 647. Here, the ALJ found that medical notations of Plaintiff being in “no acute  
2 distress” were inconsistent with Plaintiff’s “impairments and allegations of severe functional  
3 limitations and pain.” AR 13. The ALJ, however, did not specify what specific limitations he  
4 believed to be inconsistent with medical notations of “no acute distress” nor did the ALJ identify  
5 how any such notations affected Plaintiff’s ability to function in the workplace. Therefore, the ALJ  
6 erred by rejecting Plaintiff’s symptom testimony based on medical notations of “no acute distress,”  
7 and the ALJ’s reasoning was not specific, clear, or convincing.

8 Plaintiff argues that the ALJ improperly rejected Plaintiff’s symptom testimony of neck  
9 pain based on imaging and examination records of Plaintiff’s spine. Dkt. 8, at 11. An ALJ may  
10 reject subjective testimony upon finding it contradicted by or inconsistent with the medical record;  
11 however, the ALJ may not reject symptom testimony based on a lack of support in the medical  
12 record. *Carmickle*, 533 F.3d at 1161. The ALJ found that, despite Plaintiff’s allegations of  
13 “excruciating neck pain,” imaging studies of Plaintiff’s cervical spine have remained stable since  
14 2015, that Plaintiff’s doctors noted that it was “difficult to say” whether Plaintiff’s pain was related  
15 to her cervical spinal impairment, and that imaging of Plaintiff’s lumbar spine “revealed nothing  
16 beyond some mild to moderate degenerative changes without spondylolisthesis, vertical  
17 compression, or destructive lesion.” AR 13. The ALJ, however, did not describe how or why these  
18 medical records contradicted or were inconsistent with the functional limitations that Plaintiff  
19 alleges are caused by her neck impairment. Rather, the ALJ merely found that the medical records  
20 did not support Plaintiff’s alleged degree of pain. *See Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th  
21 Cir 1991) (“[The ALJ] may not reject a claimant’s subjective complaints based solely on a lack of  
22 objective medical evidence to fully corroborate the alleged severity of pain.”); *see also Rollins v.*  
23 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (“[T]he medical evidence is still a relevant factor in

1 determining the severity of the claimant's pain *and its disabling effects.*" (emphasis added)).  
2 Therefore, the ALJ erred by rejecting Plaintiff's testimony regarding disabling neck pain based on  
3 inconsistency with the medical evidence, and the ALJ's reasoning was not specific, clear, or  
4 convincing.

5 Plaintiff next argues that the ALJ improperly rejected Plaintiff's symptom testimony based  
6 on evidence of improvement with medication. Dkt. 8, at 11–12. "[I]mpairments that can be  
7 controlled effectively with medication are not disabling . . . ." *Warre v. Comm'r of Soc. Sec.*  
8 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). The ALJ cited sporadic treatment records from 2010,  
9 2011, 2014, 2015, and 2019, which noted that Plaintiff had taken different medications to treat her  
10 pain and fibromyalgia symptoms. AR 14. Although Plaintiff reported in 2019 that taking Cymbalta  
11 made her feel better at first, Plaintiff reported experiencing side effects a few months after  
12 beginning Cymbalta and discontinued the medication. AR 454, 2036–37, 2124–25. Similarly,  
13 although Plaintiff reported that taking Tramadol/Ultram was "helpful," Plaintiff nevertheless  
14 reported that she continued to have symptoms from fibromyalgia, fatigue, and pain. *See, e.g.*, AR  
15 1761, 1783. Further, Plaintiff alleges that her symptoms are unpredictable, yet the ALJ's decision  
16 does not adequately address the unpredictability or progression of Plaintiff's symptoms throughout  
17 the relevant period. *See Attmore v. Colvin*, 827 F.3d 872, 877 (9th Cir. 2016) ("[The ALJ] cannot  
18 simply pick out a few isolated instances" of medical health that support the ALJ's conclusion but  
19 must consider those instances in the broader context "with an understanding of the patient's overall  
20 well-being and the nature of her symptoms."); *see also Smith v. Kijakazi*, 14 F.4th 1108, 1113 (9th  
21 Cir. 2021) (the ALJ errs by discrediting a claimant's testimony "as a whole because of changes  
22 over time or inconsistencies relevant only to portions of testimony describing a certain period").  
23 Therefore, the ALJ's erred by rejecting Plaintiff's symptom testimony based on evidence of

1 improvement with medication, and the ALJ's reasoning was not specific, clear, or convincing.

2       Plaintiff argues that the ALJ improperly rejected Plaintiff's symptom testimony based on  
3 evidence of Plaintiff's activities. Dkt. 8, at 13–16. An ALJ may use daily activities to reject a  
4 claimant's symptom testimony where the activities contradict the claimant's testimony or where  
5 the activities are transferable to a work setting. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.  
6 2007). Here, the ALJ found that Plaintiff "acknowledged engaging in activities which suggest she  
7 is not as limited as she alleged" and that Plaintiff's "allegations of incapacity are also not supported  
8 by or consistent with the record." AR 15. Although Plaintiff reported in her Adult Function Reports  
9 that she does some household activities, Plaintiff also reported that she takes frequent rests or goes  
10 slowly when doing anything physical, that it takes her a long time to complete activities, and that  
11 she needs help with most activities due to her symptoms. AR 364–71, 397–404. The ALJ also cited  
12 evidence that Plaintiff engaged in activities, such as going on a camping trip, walking with her  
13 mother, practicing Chi Gong and yoga, swimming, kayaking, and caring for her husband, who is  
14 deaf. AR 15. However, Plaintiff reported that she experienced constant pain during the camping  
15 trip, practices only gentle Chi Gong, yoga, and aqua therapy to treat her symptoms but is unable  
16 engage in the activities for very long, was able to kayak once in 2020 for between ten to fifteen  
17 minutes by going slowly and with help, and that her care activities for her husband is limited to  
18 acting as his ears. AR 59–60, 65–70, 2153. The ALJ failed to describe how or why these activities  
19 were inconsistent with Plaintiff's testimony that she experiences pain and exhaustion when  
20 performing physical activities. *See Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) ("The Social  
21 Security Act does not require that claimants be utterly incapacitated to be eligible for benefits, and  
22 many home activities are not easily transferable to what may be the more grueling environment of  
23 the workplace, where it might be impossible to periodically rest or take medication."). Therefore,

1 the ALJ's erred by rejecting Plaintiff's symptom testimony by finding it inconsistent with evidence  
2 of Plaintiff's daily activities, and the ALJ's reasoning was not specific, clear, or convincing.

3 Finally, Plaintiff argues that the ALJ improperly rejected Plaintiff's testimony regarding  
4 disabling mental impairments based on inconsistency with the record. Dkt. 8, at 16. As discussed  
5 above, the ALJ erred in his evaluation of Dr. Widlan's opinion, which represents the only complete  
6 mental status examination in the record. Therefore, on remand, the ALJ should reconsider  
7 Plaintiff's testimony regarding debilitating mental impairments as warranted by further  
8 consideration of the evidence.

### 9 **3. Lay Witness Testimony**

10 Plaintiff argues that the ALJ improperly rejected a Function Report and Seizure  
11 Questionnaire completed by Plaintiff's mother by finding that the statements lacked "sufficiently  
12 supported information." Dkt. 8, at 17 (citing AR 19). "Lay testimony as to a claimant's symptoms  
13 is competent evidence that an ALJ must take into account, unless he or she expressly determines  
14 to disregard such testimony and gives reasons germane to each witness for doing so." *Lewis v.*  
15 *Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). Here, the ALJ rejected Plaintiff's mother's statements  
16 based solely on a lack of "sufficiently supported information to warrant the establishment of any  
17 limitations beyond those set forth herein." AR 19. Lack of support in the record is not a germane  
18 reason for rejecting lay witness testimony. *See Diedrich v. Berryhill*, 874 F.3d 634, 640–41 (9th  
19 Cir. 2017). Therefore, the ALJ erred by rejecting Plaintiff's mother's statements without providing  
20 germane reasons for doing so.

21 Plaintiff argues that the ALJ failed to provide germane reasons for rejecting statements  
22 from Plaintiff's sister, partner, and teenage daughter. Dkt. 8, at 17. Lay witness testimony as to a  
23 claimant's symptoms or how an impairment affects ability to work is competent evidence and

1 cannot be disregarded without comment. *Van Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir.  
2 1996. The Commissioner argues that the ALJ's failure to address the lay witnesses' statements  
3 was harmless because they did not describe any limitations not already described by the Plaintiff  
4 and because the ALJ credited more reliable medical evidence. Dkt. 9, at 16. As discussed above,  
5 the ALJ failed to provide specific, clear, or convincing reasons for rejecting Plaintiff's symptom  
6 testimony and further erred in his evaluation of the medical opinion evidence. Therefore, the ALJ's  
7 failure to address the lay witness statements in this matter was not harmless.

### 8 CONCLUSION

9 For the reasons set forth above, this matter is REVERSED and REMANDED for further  
10 administrative proceedings.

11 DATED this 19th day of December, 2022.

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14 MARY ALICE THEILER  
United States Magistrate Judge  
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